

**ENTERED**

August 15, 2023

Nathan Ochsner, Clerk

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

CONTEGO SPA DESIGNS, INC.,	§	
	§	
	§	
Plaintiff,	§	
v.	§	CIVIL ACTION NO. H-23-1173
	§	
T-SPA MFG., LLC and T-SPA DEPOT,	§	
LLC and US NAILS SPA, INC.,	§	
	§	
Defendants.	§	

**ORDER**

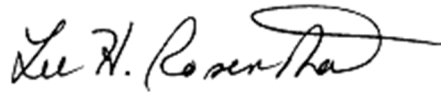
Contego Spa Designs sued T-Spa, alleging multiple counts of patent infringement. (Docket Entry No. 1). Contego designs, manufactures, and sells nail salon “spa chairs.” Contego owns Patent No. 9,289,353, covering a pedicure basin with overflow protection. Contego alleged that T-Spa was making, using, and selling pedicure spa products that “include each and every limitation of at least one claim” of the patent. (Docket Entry No. 1 at 5). T-Spa has moved to dismiss, arguing that Contego has not alleged that T-Spa’s spa chairs used liners, an element of the patented basins. (Docket Entry No. 27). T-Spa argues that Contego had admitted in the complaint that T-Spa’s product was “without liners” and that liners were an essential element of the patented basin. (Docket Entry No. 27 at 8–9). Contego’s response to the motion to dismiss argues that there was evidence not included in the complaint that T-Spa’s product used liners, and that Contego would be willing to “add[] to the Complaint.” (Docket Entry No. 32 at 9).

The allegations as to T-Spa’s use of liners appear central to Contego’s claims. The motion to dismiss is denied without prejudice as moot; Contego is ordered to file an Amended Complaint

no later than September 29, 2023. This order does not preclude T-Spa from filing a motion to challenge the Amended Complaint.

The motion to dismiss is denied as moot.

SIGNED on August 15, 2023, at Houston, Texas.

A handwritten signature in black ink, reading "Lee H. Rosenthal". The signature is fluid and cursive, with a large, sweeping loop at the end of the last name.

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Lee H. Rosenthal  
United States District Judge